

LEONARDO M. RAPADAS

United States Attorney

MIKEL W. SCHWAB

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Attorneys for the United States of America

FILED
DISTRICT COURT OF GUAM

JAN 11 2008 *hdo*

JEANNE G. QUINATA
Clerk of Court

UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

FLORENCIA Q. LEWIS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant

CIVIL CASE NO. 05-00026

**OPPOSITION OF THE UNITED
STATES TO PLAINTIFF'S MOTION
TO COMPEL PAYMENT OF
SETTLEMENT AMOUNT**

The United States welcomes the opportunity to clear up any misconceptions the Plaintiff may have about the ability and willingness of the United States to settle this case for the amount of \$339,900.00 as offered. Plaintiff is under a misconception that the United States must also obligate itself for unknown bills that Plaintiff apparently intends to submit at some future date to her medical benefits program, TRICARE. The United States will not (and can not) agree to such an unusual arrangement and has been clear from its first suggestion that it will not. (Attachment A).

There are two ways that Plaintiff can accept the settlement amount of \$339,900.00. The Plaintiff can accept an offer of judgment from the United States in that amount. (Attachment B). The other approved method is for Plaintiff to sign the standard United States Department of Justice (U. S. DOJ) form for settlement. (Attachment C).

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1 Ordinarily, in the event of a judgment for an injury, the United States has the right to
2 collect (or deduct) the amounts it expended on the treatment of Plaintiff at its' Military
3 Treatment Facilities (MTF), such as Naval Hospital or Tripler.¹ (The United States has not yet
4 charged Plaintiff or anyone for its treatment of her, as of this time.) It is completely proper for
5 the United States to agree to not charge for such expenses. In 18 years of federal practice and in
6 training at U. S. DOJ, it is apparent that such an agreement is a commonly applied way to help
7 reach a settlement.

8 Plaintiff has inexplicably parlayed this into an argument that the United States should
9 somehow agree that his client does not have to pay her medical benefits program, TRICARE, for
10 bills that may be submitted to her program in the future. These bills will apparently be from
11 private doctors and private facilities that she has consulted. These bills apparently have nothing
12 to do with her treatment at Tripler, Naval Hospital, or any other federal MTF.

13 Further, and most disconcerting, is Plaintiff's refusal to specify what bills Plaintiff is
14 referring to (Attachment D). The United States has no information as the terms and conditions
15 of Plaintiff's particular program with TRICARE (though the TRICARE website identifies three
16 levels of benefits that are possible, Prime, Extra and Standard, see
17 <http://www.tricare.mil/mybenefit/home/overview/ComparePlans?>). Because the United States
18 has no influence over the private doctors or private facilities which have or will bill her
19 TRICARE, it would appear to be Plaintiff's intention to not pay TRICARE at some point in the
20 future. (It is not clear, because Plaintiff will not respond to questions, whether she is just seeking
21 to not make her copayments, or something more.) This idea of insisting that the United States
22 agree to Plaintiff's plan to "stiff" TRICARE is unheard of, either by this Assistant United States

23 ¹ Plaintiff alleges nerve damage in her right hand (she can not fully grip)
24 resulting from an interventional radiology procedure to save a kidney
25 threatened by her uncontrolled hypertension. The surgery was successful,
26 saving her kidney -and quite likely her life- but Plaintiff claims the nerve
27 damage at the puncture site was due to a hematoma caused by negligence.
28 Plaintiff's injury was not the result of any breach in the standard of care
or negligence. To the contrary, hematoma development at the puncture site is
a known risk of this life-saving procedure. Plaintiff was advised of the
risk prior to the procedure, consented to the procedure with full knowledge
of the risk and therefore assumed the risk of this known, undesirable
outcome. In spite of this, the United States recognizes the benefit in
avoiding trial and thus agrees to a settlement.

1 Attorney or by any of the practitioners consulted at the U. S. DOJ, or by anyone contacted at
2 TRICARE. Future TRICARE claims by the Plaintiff will be processed, of course, in the normal
3 course of business under 10 U.S.C. § 1071-1110 and 32 C.F.R. Part 199. To propose otherwise,
4 is outrageous.

5 Plaintiff seems to be determined to have such an agreement and has used every
6 conceivable argument and trick to try to make it happen. For example, Plaintiff has argued that
7 TRICARE is "US", just like the Naval Hospital and Tripler. Although irrelevant to the fact that
8 the United States will not agree to his highly irregular suggestion, it is apparent that TRICARE
9 was created by Congress to operate as a benefits coverage program for persons who also have
10 access to military care. (For a detailed and technical explanation, See DECLARATION OF DON
11 M. THOMPSON, Acting Director, Beneficiary and Provider Services Division, TRICARE,
12 which was submitted in an unrelated case, Attachment E.) Plaintiff, by statute, has an obligation
13 to make a specified co-payment under a program level she has not revealed (either Prime, Extra
14 or Standard). TRICARE has no relation to the Medical Treatment Facilities such as Naval
15 Hospital or Tripler, which were the targets of Plaintiff's lawsuit, and who can be approached to
16 forgo their charges for known services they have already provided for the injury at issue in this
17 case. TRICARE was not the subject of Plaintiff's suit. Yet, Plaintiff, in a "gotcha" fashion, has
18 pointed out that federal employees are involved in TRICARE's administration, therefore,
19 according to Plaintiff's logic, it is incumbent on the United States to accept his unorthodox
20 proposal.

21 Plaintiff's use of exhibits signed by this Assistant United States Attorney is also
22 dishonest. Plaintiff is well aware that the United States would not agree to the proposal to
23 somehow cover unknown submissions to Plaintiff's TRICARE program. The United States
24 originally sent over its standard settlement letter (Attachment B) with this AUSA's signature,
25 expecting that it would be returned with Plaintiff's signature. Instead, Plaintiff made
26 handwritten changes. Those changes were incorporated into a draft adobe acrobat (PDF) copy.
27 A discussion took place about the ability of the United States to cooperate with Plaintiff's efforts
28 at confidentiality for the agreement. The United States attached a signature to the draft PDF

1 copy. In the discussion over that draft, Plaintiff pointed out that he was also still seeking an
2 agreement that Plaintiff not have to pay future bills to her TRICARE program and that language
3 had been put into the new draft of the agreement. The United States then focused on that
4 language and again stated that it would not and could not be done. At no time did Plaintiff ever
5 have reason to believe that the US would agree to the TRICARE scheme. For Plaintiff to now
6 attach his signature to the PDF draft version and state that an agreement had been reached is a
7 serious misrepresentation (Attachment F and Attachment G).

8 The possibility of fraud also exists in Plaintiff's unusual proposal. It is easy to speculate
9 (and Plaintiff, by being mysterious about what bills from TRICARE he is trying not to pay,
10 makes it necessary to speculate), that Plaintiff may cause something improper to be billed to
11 TRICARE. For example, if a Plaintiff were to hire an expert witness to assist with a tort claim
12 (as Plaintiff did with Dr. Langstrom in this case), and then somehow have TRICARE billed for
13 the expert's work, that may not be proper under the statutory provisions governing TRICARE.
14 If TRICARE then billed her, could she then cut them off from collecting because of the unusual
15 agreement Plaintiff wants this Assistant United States Attorney to submit to? Again, the unusual
16 insistence and the refusal to be specific, is confusing and raises a significant red flag.

17 No level of insistence, or trickery, can make the United States agree to an unusual,
18 unprecedented and improper agreement regarding Plaintiff's TRICARE benefits program.
19 Plaintiff must simply decide whether she wants to settle for the amount offered by the United
20 States. The United States remains, at this time, willing to settle for the amount offered.

21 The United States requests oral argument on this motion.

22
23 Dated this 11th day of January, 2008.

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LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and NMI

MIKEL M. SCHWAB
Assistant U.S. Attorney

Attachment A



U.S. Department of Justice

LEONARDO M. RAPADAS

United States Attorney

Districts of Guam and NMI

Sirena Plaza, Suite 500
108 Hernan Cortez Avenue
Hagatña, Guam 96910

(671) 472-7332
FAX: (671) 472-7215

December 11, 2007

Wayson W.S. Wong, Esq.
142 Seaton Blvd., Suite 101
Hagatna, Guam 96910

RE: Lewis v. United States

Dear Wayson,

I am in receipt of a three page letter from you and will read it as soon as I have completed documents necessary by a deadline. Perhaps we can simplify things this way. I have three attachments to this letter.

- 1). I have attached the standard agreement used by U.S. DOJ for settlement agreements;
- 2). Next, I have included the same document, with an amendment you requested. The amendment states that I will cooperate with your efforts to keep the settlement confidential. It states that I will do so only to the extent that I am allowed by statutes and regulations. I make this statement because there may be restrictions on what the United States can do in this regard. Varying the standard language is hazardous for me.
- 3). Finally, I have an offer of judgment that you can accept and file with the Court. That will trigger a judgment and an obligation for the United States to pay the judgment.

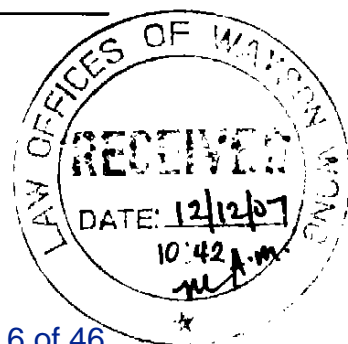
These are simple choices and I hope this will clear up any complications you perceive.

My best,

LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and NMI

BY: 

MIKEL W. SCHWAB
Assistant U.S. Attorney



Attachment

A

1 LEONARDO M. RAPADAS
United States Attorney
2 MIKEL W. SCHWAB
Assistant U.S. Attorney
3 KATHARYNE P. CLARK
Special Assistant U.S. Attorney
4 Suite 500, Sirena Plaza
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7 Attorneys for the United States of America

8 DISTRICT COURT OF GUAM

9 TERRITORY OF GUAM

10 FLORENCIA Q. LEWIS,

11 Plaintiff.

12 vs.

13 UNITED STATES OF AMERICA,

14 Defendant.

CIVIL CASE NO. 05-00026

15
16
17 **STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE**
18 **OF FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2677**

19 It is hereby stipulated by and between the undersigned plaintiff (meaning any person, other
20 than the defendant, signing this agreement, whether or not a party to this civil action), and the
21 United States of America, by and through their respective attorneys, as follows:
22

23 1. The parties do hereby agree to settle and compromise each and every claim of any kind,
24 whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise
25 to the above-captioned action under the terms and conditions set forth in this Settlement
26 Agreement.
27
28

1 2. The United States of America agrees to pay the sum of \$339,900 (Three hundred thirty
2 nine thousand nine hundred dollars), which sum shall be in full settlement and satisfaction of any
3 and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from,
4 and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal
5 injuries, damage to property and the consequences thereof, resulting, and to result, from the
6 subject matter of this settlement, including any claims for wrongful death, for which plaintiff or
7 her guardians, heirs, executors, administrators, or assigns, and each of them, now have or may
8 hereafter acquire against the United States of America, its agents, servants, and employees.

9
10 3. Plaintiff and her guardians, heirs, executors, administrators or assigns hereby agrees to
11 accept the sums set forth in this Stipulation of Compromise Settlement in full settlement and
12 satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and
13 nature, including claims for wrongful death, arising from, and by reason of any and all known and
14 unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the
15 consequences thereof which they may have or hereafter acquire against the United States of
16 America, its agents, servants and employees on account of the same subject matter that gave rise
17 to the above-captioned action, including any future claim or lawsuit of any kind or type
18 whatsoever, whether known or unknown, and whether for compensatory or exemplary damages.
19 Plaintiff and her guardians, heirs, executors, administrators or assigns further agrees to reimburse,
20 indemnify and hold harmless the United States of America, its agents, servants, and employees
21 from and against any and all such causes of action, claims, liens, rights, or subrogated or
22 contribution interests incident to or resulting from further litigation or the prosecution of claims
23 by plaintiff or her guardians, heirs, executors, administrators or assigns against any third party or
24 against the United States, including claims for wrongful death.

25
26 4. This stipulation for compromise settlement is not, is in no way intended to be, and
27 should not be construed as, an admission of liability or fault on the part of the United States, its
28 agents, servants, or employees, and it is specifically denied that they are liable to the plaintiff.

1 This settlement is entered into by all parties for the purpose of compromising disputed claims
2 under the Federal Tort Claims Act and avoiding the expenses and risks of further litigation
3 .

4 5. It is also agreed, by and among the parties, that the respective parties will each bear
5 their own costs, fees, and expenses and that any attorney's fees owed by the plaintiffs will be paid
6 out of the settlement amount and not in addition thereto.
7

8 6. It is also understood by and among the parties that pursuant to Title 28, United States
9 Code, Section 2678, attorney's fees for services rendered in connection with this action shall not
10 exceed 25 per centum of the amount of the compromise settlement.
11

12 7. The persons signing this Settlement Agreement warrant and represent that they possess
13 full authority to bind the persons on whose behalf they are signing to the terms of the settlement.
14 In the event any plaintiff is a minor or a legally incompetent adult, the plaintiffs must obtain Court
15 approval of the settlement at their expense. Plaintiff agrees to obtain such approval in a timely
16 manner: time being of the essence. Plaintiff further agrees that the United States may void this
17 settlement at its option in the event such approval is not obtained in a timely manner. In the event
18 plaintiff fails to obtain such Court approval, the entire Stipulation For Compromise Settlement
19 And Release and the compromise settlement are null and void.
20

21 8. Payment of the settlement amount will be made by government wire transfer as per the
22 following:

- 23 A. Name of Bank: Bank of Hawaii, Main Branch, (Hagatna Branch)
- 24 B. Street Address of Bank: 123 West Soledad Avenue
- 25 C. City, State, and Zip Code of Bank: Hagatna, Guam 96910
- 26 D. Routing Number: 121405018
- 27 E. Name of Account: Law Offices of Wayson Wong, A Professional
28 Corporation, Clients' Trust Account

1 LEONARDO M. RAPADAS
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2 MIKEL W. SCHWAB
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3 KATHARYNE P. CLARK
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6 FAX: (671) 472-7215

7 Attorneys for the United States of America

8 DISTRICT COURT OF GUAM

9 TERRITORY OF GUAM

10 FLORENCIA Q. LEWIS,

11 Plaintiff.

12 vs.

13 UNITED STATES OF AMERICA,

14 Defendant.

CIVIL CASE NO. 05-00026

15
16
17 **STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE**
18 **OF FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2677**

19
20 It is hereby stipulated by and between the undersigned plaintiff and the United States of
21 America, by and through their respective attorneys, as follows:

22
23 1. The parties do hereby agree to settle and compromise each and every claim
24 of any kind, whether known or unknown, arising directly or indirectly from the acts or
25 omissions that gave rise to the above-captioned action under the terms and conditions set forth in
26 this Settlement Agreement.

27
28

1 2. The United States of America agrees to pay the sum of THREE HUNDRED
2 THIRTY NINE THOUSAND NINE HUNDRED Dollars (\$339,900.00) which sum shall be in
3 full settlement and satisfaction of any and all claims, demands, rights, and causes of action of
4 whatsoever kind and nature, arising from, and by reason of any and all known and unknown,
5 foreseen and unforeseen bodily and personal injuries, damage to property and the consequences
6 thereof, resulting, and to result, from the subject matter of this settlement, including any claims
7 for wrongful death, for which plaintiff, or their guardians, heirs, executors, administrators, or
8 assigns, and each of them, now have or may hereafter acquire against the United States of
9 America, its agents, servants, and employees.

10
11 3. Plaintiff and her guardians, heirs, executors, administrators or assigns
12 hereby agree to accept the sums set forth in this Stipulation of Compromise Settlement in full
13 settlement and satisfaction of any and all claims, demands, rights, and causes of action of
14 whatsoever kind and nature, including claims for wrongful death, arising from, and by reason of
15 any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to
16 property and the consequences thereof which they may have or hereafter acquire against the
17 United States of America, its agents, servants and employees on account of the same subject
18 matter that gave rise to the above-caption, including any future claim or lawsuit of any kind or
19 type whatsoever, whether known or unknown, and whether for compensatory or exemplary
20 damages. Plaintiff and her guardians, heirs, executors, administrators or assigns further agree to
21 reimburse, indemnify and hold harmless the United States of America, its agents, servants, and
22 employees from and against any and all such causes of actions, claims, liens, rights, or subrogated
23 or contribution interests incident to or resulting from further litigation or the prosecution of claims
24 by plaintiff or her guardians, heirs, executors, administrators or assigns against any third party or
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1 against the United States, including claims for wrongful death.¹

2

3 4. This stipulation for compromise settlement is in no way intended to
4 be, and should not be construed as, an admission of liability or fault on the part of the United
5 States, its agents, servants, or employees, and it is specifically denied that they are liable to the
6 plaintiff. This settlement is entered into by all parties for the purpose of compromising disputed
7 claims under the Federal Tort Claims Act and avoiding the expenses and risks of further litigation.

8

9 5. It is also agreed, by and among the parties, that the respective parties will
10 each bear their own costs, fees, and expenses and that any attorney's fees owed by the plaintiffs
11 will be paid out of the settlement amount and not in addition thereto.

12

13 6. It is also understood by and among the parties that pursuant to Title 28,
14 United States Code, Section 2678, attorney's fees for services rendered in connection with this
15 action shall not exceed 25 per centum of the amount of the compromise settlement.

16

17 7. The person signing this Settlement Agreement warrants and represent that
18 he or she possesses full authority to bind the person(s) on whose behalf they are signing to the
19 terms of the settlement. Plaintiff further agrees that the United States may void this settlement at
20 its option in the event such approval is not obtained in a timely manner. In the event plaintiff fails
21 to obtain such Court approval, the entire Stipulation for Compromise Settlement and Release and
22 the compromise settlement are null and void.

23

24 ¹ The United States, by separate letter, has agreed to waive those charges for treatment offered at the U.S.
25 Naval Hospital, Guam, and Tripler Army Medical Center, Hawaii, for the treatment of the injury at issue in this case.
26 Plaintiff remains responsible for costs and obligations not for medical treatment offered at U.S. Naval Hospital,
Guam and Tripler, AMC, including payments to her insurance, Tricare, including those for medical care received
from non-federal doctors and others.

27

28

8. Payment of the settlement amount will be made by government wire transfer as per the following:

- A. Name of Bank: Bank of Hawaii, Main Branch, (Hagatna Branch)
- B. Street Address of Bank: 123 West Soledad Avenue
- C. City, State, and Zip Code of Bank: Hagatna, Guam 96910
- D. Routing Number: 121405018
- E. Name of Account: Law Offices of Wayson Wong, A Professional Corporation, Clients' Trust Account
- G. Account Number: 0038-094718

Plaintiff's attorney agrees to distribute the settlement proceeds to the plaintiff, and to obtain a dismissal of the above-captioned action with prejudice, with each party bearing its own fees, costs, and expenses.

9. The parties will sign a separate Stipulation for Dismissal which shall be filed with the U.S. District Court upon payment of the settlement proceeds.

10. This Stipulation for Compromise Settlement and Release will not be filed unless determined to be necessary in order to obtain the payment described.

11. The Parties agree that this Stipulation for Compromise Settlement and Release, including all the terms and conditions of this compromise settlement and any additional agreements relating thereto, can be made public in their entirety, and the Plaintiff's expressly consent to such release and disclosure pursuant to 5 U.S.C. § 552a (b). The United States does agree to cooperate in efforts by the Plaintiff in keeping the settlement confidential, unless

1 disclosure is necessary for execution or enforcement, ordered by a Court, or otherwise required by
2 law.

3
4 LEONARDO M. RAPADAS
5 United States Attorney
6

7
8 MIKEL W. SCHWAB
Assistant U.S. Attorney
9 Attorney for Defendant United States of America
10

Dated

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12 WAYSON W.S. WONG
Attorney for Plaintiff
13

Dated

14
15 FLORENCIA Q. LEWIS
16 Plaintiff
17

Dated

1 LEONARDO M. RAPADAS
United States Attorney
2 MIKEL W. SCHWAB
Assistant U.S. Attorney
3 KATHARYNE P. CLARK
Special Assistant U.S. Attorney
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5 Hagatna, Guam 96910
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6 FAX: (671) 472-7215
7 Attorneys for the United States of America

8
9
10 UNITED STATES DISTRICT COURT
11 TERRITORY OF GUAM
12

13 FLORENCIA Q. LEWIS,
14 Plaintiff,
15 vs.
16 UNITED STATES OF AMERICA,
17 Defendant.
18

CIVIL CASE NO. 05-00026

**OFFER OF JUDGMENT
PURSUANT TO
FED.R.CIV.P. RULE 68**

19
20 This is an Offer of Judgment for THREE HUNDRED THIRTY NINE THOUSAND
21 NINE HUNDRED DOLLARS (\$339,900.00) pursuant to Federal Rules of Civil Procedure,
22 Rule 68. This offer is inclusive of costs and fees, and is not an admission of liability. If within
23 ten (10) days after the service of this offer you accept, either party may then file this offer and
24 notice of acceptance together with proof of service thereof and there upon the clerk shall enter
25 judgment. Should you fail to accept this offer and fail to gain a final judgment against
26
27

28 Lewis_offer of judgment

1 this defendant in excess of THREE HUNDRED THIRTY NINE THOUSAND NINE
2 HUNDRED DOLLARS (\$339,900.00) you must pay all costs incurred after the date of this
3 offer.

4 SO SUBMITTED this 11th day of December, 2007.

6 LEONARDO M. RAPADAS
7 United States Attorney
8 District of Guam and NMI

9 BY: _____
10 MIKEL W. SCHWAB
11 Assistant U.S. Attorney
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28 Lewis_offer of judgment

Attachment B

ORIGINAL

1 LEONARDO M. RAPADAS
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2 MIKEL W. SCHWAB
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108 Herman Cortez Avenue
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TEL: (671) 472-7332
5 FAX: (671) 472-7215

6 Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF GUAM

13 FLORENCIA Q. LEWIS,
14 Plaintiff,

15 vs.

16 UNITED STATES OF AMERICA,
17
Defendant.

CIVIL CASE NO. 05-00026

**OFFER OF JUDGMENT
PURSUANT TO
FED.R.CIV.P. RULE 68**

RECEIVED
DATE: 1/4/83
Jan 2:32

This is an Offer of Judgment for THREE HUNDRED THIRTY-NINE THOUSAND NINE HUNDRED DOLLARS (\$339,900.00) pursuant to Federal Rules of Civil Procedure, Rule 68. This offer is inclusive of costs and fees, and is not an admission of liability. If within ten (10) days after the service of this offer you accept, either party may then file this offer and notice of acceptance together with proof of service thereof and there upon the clerk shall enter judgment. Should you fail to accept this offer and fail to gain a final judgment against this defendant in excess of THREE HUNDRED THIRTY-NINE THOUSAND NINE HUNDRED DOLLARS (\$339,900.00)

28 Lewis_offer of judgment

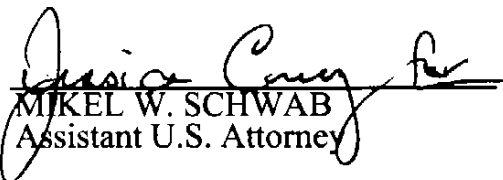
**Attachment
B**

1 you must pay all costs incurred after the date of this offer.

2 SO SUBMITTED this 4th day of January, 2008.

3
4 LEONARDO M. RAPADAS
5 United States Attorney
6 Districts of Guam and NMI

7 BY:

8 
MIKEL W. SCHWAB
Assistant U.S. Attorney

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28 Lewis_offer of judgment

LEONARDO M. RAPADAS
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 MIKEL W. SCHWAB
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 Fax: 671-472-7215

Attorneys for the United States of America

UNITED STATES DISTRICT COURT FOR THE TERRITORY OF GUAM

FLORENCIA Q. LEWIS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CIVIL CASE NO. 05-00026

CERTIFICATE OF SERVICE

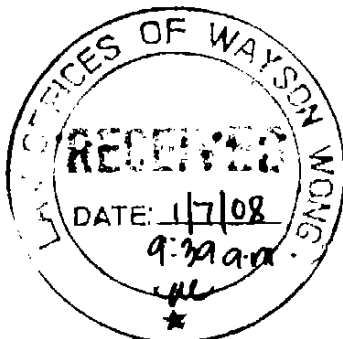
I, Jacqueline O. Emmanuel, Administrative Assistant, hereby certify that on 4th day of January 2008, I caused to be served by personal service the following document: "Offer of Judgment Pursuant to Fed.R.Civ.P. Rule 68", Civil Case No. 05-00026, Florencia Q. Lewis vs. United States of America, to the following attorney of record:

Wayson Wong, Esq.
 Law Offices of Wayson Wong
 142 Seaton Blvd., Suite 101
 Hagatna, GU 96910

LEONARDO M. RAPADAS
 United States Attorney
 Districts of Guam and NMI

BY:

Jacqueline Emmanuel
 JACQUELINE EMMANUEL
 Administrative Assistant



Attachment C

1 LEONARDO M. RAPADAS
United States Attorney
2 MIKEL W. SCHWAB
Assistant U.S. Attorney
3 KATHARYNE P. CLARK
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11 Plaintiff.

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18 **OF FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2677**

19 It is hereby stipulated by and between the undersigned plaintiff (meaning any person, other
20 than the defendant, signing this agreement, whether or not a party to this civil action), and the
21 United States of America, by and through their respective attorneys, as follows:
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23 1. The parties do hereby agree to settle and compromise each and every claim of any kind,
24 whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise
25 to the above-captioned action under the terms and conditions set forth in this Settlement
26 Agreement.
27
28

Attachment
C

1

1 2. The United States of America agrees to pay the sum of \$339,900 (Three hundred thirty
2 nine thousand nine hundred dollars), which sum shall be in full settlement and satisfaction of any
3 and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from,
4 and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal
5 injuries, damage to property and the consequences thereof, resulting, and to result, from the
6 subject matter of this settlement, including any claims for wrongful death, for which plaintiff or
7 her guardians, heirs, executors, administrators, or assigns, and each of them, now have or may
8 hereafter acquire against the United States of America, its agents, servants, and employees.

9
10 3. Plaintiff and her guardians, heirs, executors, administrators or assigns hereby agrees to
11 accept the sums set forth in this Stipulation of Compromise Settlement in full settlement and
12 satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and
13 nature, including claims for wrongful death, arising from, and by reason of any and all known and
14 unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the
15 consequences thereof which they may have or hereafter acquire against the United States of
16 America, its agents, servants and employees on account of the same subject matter that gave rise
17 to the above-captioned action, including any future claim or lawsuit of any kind or type
18 whatsoever, whether known or unknown, and whether for compensatory or exemplary damages.
19 Plaintiff and her guardians, heirs, executors, administrators or assigns further agrees to reimburse,
20 indemnify and hold harmless the United States of America, its agents, servants, and employees
21 from and against any and all such causes of action, claims, liens, rights, or subrogated or
22 contribution interests incident to or resulting from further litigation or the prosecution of claims
23 by plaintiff or her guardians, heirs, executors, administrators or assigns against any third party or
24 against the United States, including claims for wrongful death.

25
26 4. This stipulation for compromise settlement is not, is in no way intended to be, and
27 should not be construed as, an admission of liability or fault on the part of the United States, its
28 agents, servants, or employees, and it is specifically denied that they are liable to the plaintiff.

1 This settlement is entered into by all parties for the purpose of compromising disputed claims
2 under the Federal Tort Claims Act and avoiding the expenses and risks of further litigation
3 .

4 5. It is also agreed, by and among the parties, that the respective parties will each bear
5 their own costs, fees, and expenses and that any attorney's fees owed by the plaintiffs will be paid
6 out of the settlement amount and not in addition thereto.
7

8 6. It is also understood by and among the parties that pursuant to Title 28, United States
9 Code, Section 2678, attorney's fees for services rendered in connection with this action shall not
10 exceed 25 per centum of the amount of the compromise settlement.
11

12 7. The persons signing this Settlement Agreement warrant and represent that they possess
13 full authority to bind the persons on whose behalf they are signing to the terms of the settlement.
14 In the event any plaintiff is a minor or a legally incompetent adult, the plaintiffs must obtain Court
15 approval of the settlement at their expense. Plaintiff agrees to obtain such approval in a timely
16 manner: time being of the essence. Plaintiff further agrees that the United States may void this
17 settlement at its option in the event such approval is not obtained in a timely manner. In the event
18 plaintiff fails to obtain such Court approval, the entire Stipulation For Compromise Settlement
19 And Release and the compromise settlement are null and void.
20

21 8. Payment of the settlement amount will be made by government wire transfer as per the
22 following:

- 23 A. Name of Bank: Bank of Hawaii, Main Branch, (Hagatna Branch)
- 24 B. Street Address of Bank: 123 West Soledad Avenue
- 25 C. City, State, and Zip Code of Bank: Hagatna, Guam 96910
- 26 D. Routing Number: 121405018
- 27 E. Name of Account: Law Offices of Wayson Wong, A Professional
28 Corporation, Clients' Trust Account

1 G. Account Number: 0038-094718

2 Plaintiff's attorney agrees to distribute the settlement proceeds among the plaintiff, and to
3 obtain a dismissal of the above-captioned action with prejudice, with each party bearing its own
4 fees, costs, and expenses.

5
6 9. The parties agree that this Stipulation for Compromise Settlement and Release,
7 including all the terms and conditions of this compromise settlement and any additional
8 agreements relating thereto, may be made public in their entirety, and the plaintiff expressly
9 consents to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

10
11 10. It is contemplated that this Stipulation may be executed in several counterparts, with a
12 separate signature page for each party. All such counterparts and signature pages, together, shall
13 be deemed to be one document.

14
15 LEONARDO M. RAPADAS
16 United States Attorney

17
18 _____
19 MIKEL W. SCHWAB
20 Assistant U.S. Attorney
21 Attorney for Defendant United States of America

Dated

22 _____
23 WAYSON W.S. WONG
24 Attorney for Plaintiff

Dated

25
26 _____
27 FLORENCIA Q. LEWIS
28 Plaintiff

Dated

Attachment D



U.S. Department of Justice

LEONARDO M. RAPADAS

*United States Attorney
Districts of Guam and NMI*

*Sirena Plaza, Suite 500
108 Hernan Cortez Avenue
Hagatña, Guam 96910*

*(671) 472-7332
FAX: (671) 472-7215*

December 11, 2007

Wayson W.S. Wong, Esq.
142 Seaton Blvd., Suite 101
Hagatna, Guam 96910

RE: Lewis v. United States

Dear Wayson,

Please, please, please, show me whatever bills you have that concern you. It is essential that I know what it is we are discussing. When I talk to various experts who have years of experience and may be able to help, they tell me that they must see what you are referring to before any coherent answers can be given. Abstract discussions increase the chances for misunderstandings.

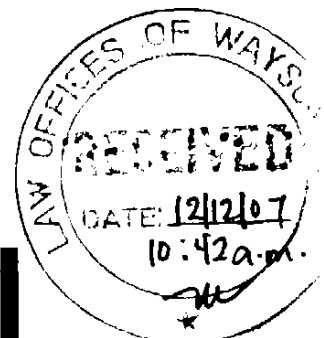
I am standing by for copies of whatever submissions concern you.

My best,

LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and NMI

BY: _____

MIKEL W. SCHWAB
Assistant U.S. Attorney



Attachment
D

Attachment E

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS

Rayford J. Wright)	Case No. 06-1051
)	
Plaintiff,)	
)	
v.)	
)	
TRICARE Management)	
)	
Defendant.)	

DECLARATION OF DON M. THOMPSON

I, Don M. Thompson, declare and state as follows:

1. I am the Acting Director, Beneficiary and Provider Services Division, TRICARE Management Activity (TMA), Department of Defense. As part of my duties I am required to be familiar with the provisions of the TRICARE program and with TRICARE claims processing procedures.

2. The TRICARE program (also known as CHAMPUS) is a medical benefits program established by Congress. Presently, the eligible beneficiaries are: the spouses and dependent children of active duty members of the uniformed services, retired members of the uniformed services and their spouses and dependent children, and survivors of deceased members; in some instances, former spouses may also be eligible. The seven uniformed services that are covered by TRICARE/CHAMPUS are: Army, Navy, Air Force, Marine Corps, Coast Guard, U.S. Public Health Service, and the National Oceanic and Atmospheric Administration. CHAMPUS is an acronym for the Civilian Health and Medical Program of the Uniformed Services. The statutory provisions authorizing TRICARE/CHAMPUS are generally found at 10 U.S.C. 1071-1110. The implementing regulations are found at 32 C.F.R. Part 199.

3. The original legislation providing financial assistance for medical expenses for military dependents was known as the Dependent's Medical Care Act, Public Law 84-569, approved June 7, 1956. (See U.S. Code, Congressional and Administrative News pages 2698-2714.) In addition to authorizing medical care for certain beneficiaries in medical facilities of the Uniformed Services, the Act also entitled dependents of active duty members to hospitalization in civilian hospitals for treatment of most types of illnesses. This initial coverage of active duty dependents' hospital care initiated what has now become the TRICARE program.

4. In July 1997, the Office of CHAMPUS changed its name to the TRICARE Support Office (TSO). In March 1998, the TRICARE Management Activity (TMA) replaced TSO. TMA has the responsibility for

Attachment
E

administering TRICARE/CHAMPUS. The TRICARE Management Activity was established by Department of Defense Directive 5136.12 (DoD 5136.12) on May 31, 2001, DoD 5136.12 also disestablished the TSO. Paragraph 5 of DoD 5136.12 establishes the TMA as a DoD Field Activity of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) to operate under the authority, direction and control of the Assistant Secretary of Defense for Health Affairs (ASD(HA)). Paragraph 1 of DoD 5136.12 states that all references to active functions or authorities in the Office of CHAMPUS or OCHAMPUS shall be understood to be references to functions and authorities of TMA (successor to TSO).

5. The Act was substantially changed and expanded with enactment of the Military Medical Benefits amendments of 1966, Public Law 89-614, approved September 30, 1966. (See 1966 U.S. Code, Congressional and Administrative News, pages 3082-3111.) The principle feature of this legislation was to expand the beneficiary population entitled to coverage under the civilian medical program to include Uniformed Services retirees and their dependents and surviving dependents of deceased retired and deceased active duty members. In addition, the types of medical services covered were expanded to include care provided on an outpatient as well as an inpatient basis, and the types of health care authorized were expanded. Congress also addressed what medical services could be provided at military treatment facilities (MTFs). (See Chapter 55, Title 10 U.S.C. §§ 1071-1110.) At this point, CHAMPUS coverage would have been similar to a third party health insurance plan such as the Blue Cross/Blue Shield coverage available under the Federal Employees Health Benefits Program.

6. By statute, administration of the CHAMPUS program is the responsibility of the Secretary of Defense. The Director, TMA is charged with assisting in the operational management and direction of all CHAMPUS programs and activities, including contracting for healthcare services.

7. The TRICARE program provides for what can be described as a triple option benefit, (1) a HMO-type option, which is called TRICARE Prime; (2) a preferred provider network, known as TRICARE Extra; and (3) standard claims processing for other providers, which is known as standard CHAMPUS. Active duty family members who enroll in TRICARE Prime are not liable for any deductibles or cost-shares. Other enrollees pay an enrollment fee, deductibles and cost-shares. Beneficiaries who use a preferred provider generally have charges lower than standard CHAMPUS and may not be balanced billed by a TRICARE network provider.

8. TMA maintains in the regular course of business computerized records of processed TRICARE claims. TMA also requires its contractors to maintain copies of claims that it processes. Humana Military Healthcare Services, Inc. (Humana) is the current TRICARE Managed Care Support Contractor for the TRICARE South Region. Arkansas is part of the TRICARE South Region. Palmetto Government Benefits Administrators is a subcontractor to Humana and processes TRICARE claims for Humana.

9. Attached are copies of three claims and the Explanation of Benefits (EOB) for each claim (Attachments A, B, and C). The copies were obtained from TRICARE business records.

10. The attached copies redact personal information (e.g. Social Security Number), not previously disclosed in this litigation.

11. Attachment A shows a claim in the billed amount of \$80.00 for a medical service identified as "92014" by Dr. Dedman of the Family Eye Care Center provided to Mr. Rayford Wright. "92014" is a code from the Physicians Current Procedure Terminology (CPT) which is published by the American Medical Society. A "92014" is for ophthalmological services, comprehensive for an established patient. The EOB shows that it was denied as a noncovered service.

12. Attachment B shows a claim in the billed amount of \$65.00 for a medical service identified as "92002" by Dr. Dedman of the Family Eye Care Center provided to Ms. Christina Wright. "92002" is a code from the CPT and it is for ophthalmological services, comprehensive new patient. The EOB shows that it was denied as a noncovered service.

13. Attachment C shows a claim in the billed amount of \$65.00 for a medical service identified as "92002" by Dr. Dedman of the Family Eye Care Center provided to Ms. Rapaela Wright. As noted above, "92002" is a code from the CPT and it is for ophthalmological services, comprehensive new patient. The EOB shows that it was denied as a noncovered service.

14. The copies of claims and EOBs that are maintained are of the front page. There is standard "boilerplate" on the back of the claim form. TRICARE uses (accepts) the same claim form that Medicare uses which is the HCFA 1500 (now known as the CMS 1500).

15. The TRICARE Operations Manual (TOM) (a copy of which may be found on the TRICARE website <http://www.tricare.mil> (<http://manuals.tricare.osd.mil/>)) addresses EOBs. TMA does not design the form to allow contractors to design the EOB form to fit their individual equipment and system needs. However, the TRICARE Operations Manual specifically provides in Chapter 8, Section 8, paragraph 9.0:

The following information shall be on the reverse of the EOB:

Right to Appeal

If you disagree with the determination on your claim, you have the right to request a reconsideration. Your signed written request must state the specific matter with which you disagree and **MUST** be sent to the following address no later than 90 days from the date of this notice. If the postmark on the envelope is not legible, then the date of receipt is deemed the date of filing. Include a copy of

this notice. On receiving your request, all TRICARE claims for the entire course of treatment will be reviewed.

(Contractor's Address)

16. TMA is not aware of any administrative appeal being filed for the above three claims.

17. All three claims reflect that they were for routine eye exams and denied as a noncovered service. By statute, TRICARE cannot pay for routine eye exams for retirees and dependents of retirees.

18. Defense Enrollment Eligibility Reporting System (DEERS) records reflect that Mr. Wright retired from active duty effective July 1, 1999. Mr. Wright was a Sergeant First Class. TMA records show that Mr. Wright was standard TRICARE as of the date of the care (August 2, 2005). TMA records further reflect that Mr. Wright changed from standard TRICARE to Prime effective September 1, 2005.

19. Title 10, United States Code, Section 1086 addresses health benefits for "certain members, former members, and their dependents. Section 1086(a) provides, in its last sentence: "However, eye examinations may not be provided under such plans for persons covered by subsection (c)." Subsection 1086(c) picks up retirees such as SFC Wright and the eligible dependents of a retiree such as SFC Wright's children under the age of 21.

20. By contrast, in Title 10, United States Code, Section 1079(a) addresses coverage for the spouses and dependent children of active duty members and provides at Section 1079(a)(3) "not more than one eye examination may be provided to a patient in any calendar year."

21. The DoD Regulation in 32 C.F.R. 199.2 provides the following definitions:

Routine eye examinations. The services rendered in order to determine the refractive state of the eyes.

22. The DoD Regulation in 32 C.F.R. 199.4(c) provides the following exclusion:

(xvi) Routine eye examinations. Coverage for routine eye examinations is limited to dependents of active duty members, to one examination per calendar year per person, and to services rendered on or after October 1, 1984, except as provided under paragraph (c)(3)(xi) of this section.

Subparagraph (c)(3)(xi) provides for vision, hearing, and dental screening as part of the well-child care coverage. Well-child care is from birth to age six.

23. The TRICARE Policy Manual (copy of Chapter 7, Section 6.1, Ophthalmological Services, attached as Exhibit "D") provides this further interpretation of the Regulation that "A 'routine eye

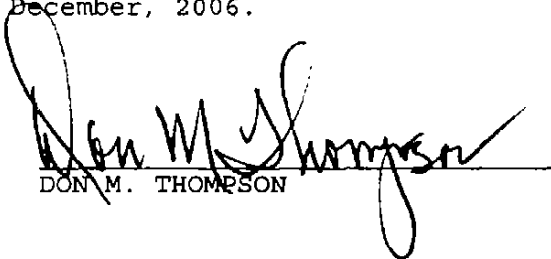
examination' is an evaluation of the eyes, including but not limited to refractive services, that is not related to a medical or surgical condition or in the medical or surgical treatment of a covered illness or injury." (Underlining in original.) The routine eye examination code that are identified include: 92002 - eye exam, new patient and 92014 - eye exam and treatment.

24. The TRICARE regulation provides for an administrative appeal process. As stated above, all explanation of benefits (EOBs) issued by a TRICARE contractor include a paragraph advising the patient or sponsor of their administrative appeal rights. TMA has no information showing that plaintiff exercised his administrative appeal rights.

25. Administrative appeals are limited to factual disputes. If the claims were for routine eye examinations for a retired member of a uniformed service and/or the dependents of a retired member of a uniformed service, there would be no factual issue to be resolved.

I declare under penalty of perjury that the following is true and correct in accordance with 28 U.S.C. § 1746.

Executed this 15th day of December, 2006.


DON M. THOMPSON

PLEASE DO NOT STAPLE IN THIS AREA
DOS - 08/02/05 - 08/02/05

CLH-5217X0HQD0099 PROV=710670979

08/05/05

08/05/2005 06217 08/05/05 11:28:53 76M0433MD 020 SOUTH

HEALTH INSURANCE CLAIM FORM

PCA

1. MEDICARE MEDICAID CHAMPUS CHAMPVA GROUP HEALTH PLAN FEDA BLK LUNG OTHER (Medicare #) (Medicaid #) (Employer's ID) (VA File #) (BSN or ID) (BSN) (ID)		10. INSURED'S I.D. NUMBER (FOR PROGRAM IN ITEM 1) 06276	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) WRIGHT, RAYFORD		4. INSURED'S NAME (Last Name, First Name, Middle Initial) WRIGHT, RAYFORD	
3. PATIENT'S BIRTH DATE MM DD YY 06 25 1961 M F SEX		7. INSURED'S ADDRESS (No., Street) P O BOX 310	
5. PATIENT'S ADDRESS (No., Street) P O BOX 310		8. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>	
6. PATIENT STATUS Single <input type="checkbox"/> Married <input type="checkbox"/> Other <input checked="" type="checkbox"/> Employed <input type="checkbox"/> Full-Time Student <input type="checkbox"/> Part-Time Student <input type="checkbox"/>		9. CITY STATE BEARDEN AR	
11. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (CURRENT OR PREVIOUS) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		12. INSURED'S POLICY GROUP OR FECA NUMBER EFF- 08/02/05 - 08/05/05	
13. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial) NONE		14. INSURED'S DATE OF BIRTH MM DD YY M F SEX	
15. OTHER INSURED'S POLICY OR GROUP NUMBER		16. EMPLOYER'S NAME OR SCHOOL NAME	
17. OTHER INSURED'S DATE OF BIRTH MM DD YY M F SEX		18. INSURANCE PLAN NAME OR PROGRAM NAME STATUS - GRADE - BRANCH -	
19. EMPLOYER'S NAME OR SCHOOL NAME		19. IS THERE ANOTHER HEALTH BENEFIT PLAN? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, return to and complete item 9 a-d.	
20. INSURANCE PLAN NAME OR PROGRAM NAME		20. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED SIGNATURE ON FILE RELEASE- STON- DATE	
21. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED SIGNATURE ON FILE RELEASE- STON- DATE		21. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM DD YY TO MM DD YY 22. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY	
22. DATE OF CURRENT ILLNESS (First symptom) OR INJURY (Accident) OR PREGNANCY (LMP) MM DD YY		23. OUTSIDE LAST \$ CHARGES <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO .00 ASF -	
23. NAME OF REFERRING PHYSICIAN OR OTHER SOURCE		24. MEDICAID RESUBMISSION CODE ORIGINAL REF. NO. FFTH -	
24. RESERVED FOR LOCAL USE OHIAA - .00		25. PRIOR AUTHORIZATION NUMBER FAI - HTF -	
25. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (RELATE ITEMS 1,2,3 OR 4 TO ITEM 24E BY LINE) 1. 3671 2. 3. 4.		26. FEDERAL TAX I.D. NUMBER S&N EN 710670979	
26. DATE(S) OF SERVICE From To MM DD YY MM DD YY 08 02 05 08 02 05 11 6 3/11		27. PATIENT'S ACCOUNT NO. 7015	
27. TYPE OF SERVICE CPT/HCPCS (MODIFIER) 92014 00 00 00 00		28. ACCEPT ASSIGNMENT? (For Govt. claims, see back) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
28. PROCEDURES, SERVICES, OR SUPPLIES (EXPLAIN UNUSUAL CIRCUMSTANCES) CPT/HCPCS (MODIFIER)		29. TOTAL CHARGE \$ 00 00	
29. DIAGNOSIS CODE 1		30. AMOUNT PAID \$ 00 00	
30. \$ CHARGES \$ 00 00		31. BALANCE DUE \$ 00 00	
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREE OR CREDENTIALS I certify that the statements on the reverse apply to this bill and are made a part thereof. CAM - REGION - F SH - ROUT - SIGNATURE ON FILE SIGNED Date		32. NAME AND ADDRESS OF FACILITY WHERE SERVICES WERE RENDERED (If other than home or office) FAMILY EYE CARE CENTER PA 515 CASH ROAD CAMDEN AR 71701	
32. PHYSICIAN'S, SUPPLIER'S BILLING NAME, ADDRESS, ZIP CODE & PHONE # FAMILY EYE CARE CENTER PA 515 CASH ROAD CAMDEN AR 71701 870 836-2525 GPO 710670979		33. SIGNATURE OF PHYSICIAN OR SUPPLIER SIGNED Date	

PLEASE PRINT OR TYPE

"A"

PGBA, LLC
TRICARE SOUTH REGION
P.O. BOX 7032
CAMDEN, SC 29020-7032

TRICARE EXPLANATION OF BENEFITS

This is a statement of the action taken on your TRICARE claim.
Keep this notice for your records.



www.humana-military.com

Date of Notice: August 10, 2005
Sponsor SSN: ***-**-5276
Sponsor Name: RAYFORD J WRIGHT
Beneficiary Name: RAYFORD J WRIGHT



RAYFORD J WRIGHT
P O BOX 310
BEARDEN AR 71720-0310

Benefits were payable to:

THOMAS M DEDMAN OD
515 CASH ROAD
CAMDEN AR 71701

Claim Number: 5217X0HQD-00-00

Services Provided By/ Date of Services	Services Provided	Amount Billed	TRICARE Approved	See Remarks
THOMAS M DEDMAN OD 08/02/2005	001 Eye exam & treatment (92014)	80.00	0.00	1, 2, 3, 4
Totals:		80.00	0.00	

Claim Summary	Beneficiary Liability Summary	Benefit Period Summary
------------------	----------------------------------	---------------------------

Amount Billed:	80.00	Deductible:	0.00	Fiscal Year Beginning:	
TRICARE Approved:	0.00	Copayment:	0.00	October 01, 2004	
Non-covered:	80.00	Cost Share:	0.00		Individual Family
Paid by Beneficiary:	0.00	Patient Responsibility:	0.00	Deductible:	0.00 0.00
Other Insurance:	0.00			Catastrophic Cap:	0.00
Paid to Provider:	0.00				
Paid to Beneficiary:	0.00				
Check Number:					

Remarks:

- 1 - NONCOVERED SERVICE(S).
- 2 - HUMANA AND PGBA ARE MAKING TRICARE EASIER. FOR ONLINE CLAIM AND REFERRAL STATUS, ELIGIBILITY AND MUCH MORE, VISIT WWW.HUMANA-MILITARY.COM AND WWW.MYTRICARE.COM.
- 3 - \$.00 HAS BEEN APPLIED TOWARD THE FISCAL YEAR CATASTROPHIC CAP OF \$3,000.00.
- 4 - TRICARE PRIME CAN SAVE YOU MONEY. LEARN HOW TO ENROLL BY CALLING 1-800-444-5445.

1-800-403-3950

THIS IS NOT A BILL

If you have questions regarding this notice, please call or write us at telephone number/address listed above.



Page 1 of 1

PLEASE
DO NOT
STAPLE
IN THIS
AREA

DOB - 08/02/05 - 08/02/05

CLM-5217X0HQB0099 PROV=710670979

08/05/05

08/05/2005 05217 08/05/05 11:28:53 7090433MO 828 SOUTH

HEALTH INSURANCE CLAIM FORM

PICA

1. MEDICARE <input type="checkbox"/> MEDICAID <input type="checkbox"/> CHAMPUS <input checked="" type="checkbox"/> CHAMPVA <input type="checkbox"/> GROUP HEALTH PLAN <input type="checkbox"/> FEDA BLK LUNG <input type="checkbox"/> OTHER <input type="checkbox"/>		10. INSURED'S I.D. NUMBER (FOR PROGRAM IN ITEM 1) 5276	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) WRIGHT, CRISTINA		4. INSURED'S NAME (Last Name, First Name, Middle Initial) WRIGHT, RAYFORD	
3. PATIENT'S BIRTH DATE MM DD YY 08 02 05		5. INSURED'S ADDRESS (No. Street) P O BOX 310	
6. PATIENT RELATIONSHIP TO INSURED Self <input type="checkbox"/> Spouse <input checked="" type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>		7. INSURED'S ADDRESS (No. Street) CITY STATE ZIP CODE TELEPHONE (Include Area Code)	
8. PATIENT STATUS Single <input type="checkbox"/> Married <input type="checkbox"/> Other <input checked="" type="checkbox"/>		9. INSURED'S POLICY GROUP OR FECA NUMBER EFF- 08/02/05 - 08/05/05	
11. INSURED'S DATE OF BIRTH MM DD YY 08 02 05		12. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE	
13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE		14. DATE OF CURRENT: ILLNESS (First symptom) OR INJURY (Accident OR PREGNANCY (LMP))	
15. IF PATIENT HAS HAD SAME OR SIMILAR ILLNESS, GIVE FIRST DATE		16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION	
17. NAME OF REFERRING PHYSICIAN OR OTHER SOURCE		18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES	
19. RESERVED FOR LOCAL USE OHIAA - .00		20. OUTSIDE LAB? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (RELATE ITEMS 1,2,3 OR 4 TO ITEM 24E BY LINE)		22. MEDICARE RESUBMISSION CODE	
23. PRIOR AUTHORIZATION NUMBER		24. A. DATE(S) OF SERVICE	
24. B. PLACE OF SERVICE		24. C. TYPE OF SERVICE	
24. D. PROCEDURES, SERVICES, OR SUPPLIES (EXPLAIN UNUSUAL CIRCUMSTANCES)		24. E. DIAGNOSIS CODE	
24. F. CHARGES		24. G. DAYS OR UNITS	
24. H. EPOXY FAMILY FIRM		24. I. EMO	
24. J. COB		24. K. RESERVED FOR LOCAL USE	
25. FEDERAL TAX I.D. NUMBER		26. PATIENT'S ACCOUNT NO.	
27. ACCEPT ASSIGNMENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		28. TOTAL CHARGE	
29. NAME AND ADDRESS OF FACILITY WHERE SERVICES WERE RENDERED (If other than home or office)		30. AMOUNT PAID	
31. PHYSICIAN'S, SUPPLIER'S BILLING NAME, ADDRESS, ZIP CODE & PHONE #		32. BALANCE DUE	

PLEASE PRINT OR TYPE

'B'

Table 1



Military Healthcare Services

**This is a statement of the action taken on your TRICARE claim.
Keep this notice for your records.**

Date of Notice: August 10, 2005
Sponsor SSN: ***-**-5276
Sponsor Name: RAYFORD J WRIGHT
Beneficiary Name: CRISTINA G WRIGHT

CRISTINA G WRIGHT
P O BOX 310
BEARDEN AR 71720-0310

**THOMAS M DEDMAN OD
515 CASH ROAD
CAMDEN AR 71701**

Services Provided By/ Date of Services	Services Provided	Amount Billed	TRICARE Approved	See Remarks
THOMAS M DEDMAN OD				
08/02/2005	001 Eye exam, new patient (92002)	65.00	0.00	1, 2, 3, 4
Totals:		65.00	0.00	

Claim Summary	Beneficiary Liability Summary	Benefit Period Summary
Amount Billed:	65.00	Deductible:
TRICARE Approved:	0.00	Copayment:
Non-covered:	65.00	Cost Share:
Paid by Beneficiary:	0.00	Patient Responsibility:
Other Insurance:	0.00	
Paid to Provider:	0.00	
Paid to Beneficiary:	0.00	
Check Number:		

- 1 - NONCOVERED SERVICE(S).
- 2 - HUMANA AND PGBA ARE MAKING TRICARE EASIER. FOR ONLINE CLAIM AND REFERRAL STATUS, ELIGIBILITY AND MUCH MORE, VISIT WWW.HUMANA-MILITARY.COM AND WWW.MYTRICARE.COM.
- 3 - \$.00 HAS BEEN APPLIED TOWARD THE FISCAL YEAR CATASTROPHIC CAP OF \$3,000.00.
- 4 - TRICARE PRIME CAN SAVE YOU MONEY. LEARN HOW TO ENROLL BY CALLING 1-800-444-5445.

THIS IS NOT A BILL
If you have questions regarding this notice, please call or write us at telephone number/address listed above.



PLEASE DO NOT STAPLE IN THIS AREA
DOS - 08/02/05 - 08/02/05

CLN-5217X0HC0099 PROV=710670979

08/05/05

08/05/2005 05217 08/05/05 11:28:53 7C00433NO 020 SOUTH

HEALTH INSURANCE CLAIM FORM

<input type="checkbox"/> MEDICARE <input type="checkbox"/> MEDICAID <input checked="" type="checkbox"/> CHAMPUS <input type="checkbox"/> CHAMPVA <input type="checkbox"/> GROUP HEALTH PLAN <input type="checkbox"/> FEDAL BLK LUNG <input type="checkbox"/> OTHER		1a. INSURED'S I.D. NUMBER (FOR PROGRAM IN ITEM 1) 300005276	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) WRIGHT, RAPAEALA		3. PATIENT'S BIRTH DATE MM DD YY 08 12 1998 M <input type="checkbox"/> F <input checked="" type="checkbox"/>	
5. PATIENT'S ADDRESS (No. Street) P O BOX 310		6. PATIENT RELATIONSHIP TO INSURED Self <input type="checkbox"/> Spouse <input type="checkbox"/> Child <input checked="" type="checkbox"/> Other <input type="checkbox"/>	
CITY BEARDEN		CITY STATE AR	
ZIP CODE 71720		TELEPHONE (Include Area Code) ()	
8. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial) NONE		10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (CURRENT OR PREVIOUS) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
9. OTHER INSURED'S POLICY OR GROUP NUMBER		11. INSURED'S POLICY GROUP OR PECA NUMBER EFF- 08/02/05 - 08/05/05	
10. OTHER INSURED'S DATE OF BIRTH MM DD YY M <input type="checkbox"/> F <input type="checkbox"/>		12. INSURED'S DATE OF BIRTH MM DD YY M <input type="checkbox"/> F <input type="checkbox"/>	
11. EMPLOYER'S NAME OR SCHOOL NAME		13. INSURANCE PLAN NAME OR PROGRAM NAME STATUS - GRADE - BRANCH -	
12. INSURANCE PLAN NAME OR PROGRAM NAME		14. IS THERE ANOTHER HEALTH BENEFIT PLAN? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If YES, return to end complete item 8 a-d.	
13. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. WRIGHT, RAYFORD SIGNED SIGNATURE ON FILE RELEASE- SIGN- DATE		14. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED SIGNATURE ON FILE ASSIGN-	
15. DATE OF CURRENT ILLNESS (First symptom) OR INJURY (Accident) OR PREGNANCY (LMP) MM DD YY		16. IF PATIENT HAS HAD SAME OR SIMILAR ILLNESS, GIVE FIRST DATE MM DD YY	
17. NAME OF REFERRING PHYSICIAN OR OTHER SOURCE		18. ID NUMBER OF REFERRING PHYSICIAN	
19. RESERVED FOR LOCAL USE OHIAA - .00		20. OUTSIDE LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ CHARGES .00 ASF -	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (RELATE ITEMS 1, 2, 3 OR 4 TO ITEM 24E BY LINE) 1. 36720 2. 3. 4.		22. MEDICAID RESUBMISSION CODE ORIGINAL REF. NO. PETH -	
23. PRIOR AUTHORIZATION NUMBER		PAI - MTF -	
24. A. DATE(S) OF SERVICE From To MM DD YY MM DD YY 08 02 05 08 02 05 B. Place of Service 11 C. Type of Service 6 D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER 92002 00 00 00 00 E. DIAGNOSIS CODE 1		F. \$ CHARGES 65 00 G. DAYS OR UNITS 1 H. EPOBT Family Plan I. EMO J. COB K. RESERVED FOR LOCAL USE DEDMAN 00, TOM	
25. FEDERAL TAX I.D. NUMBER 710670979		26. PATIENT'S ACCOUNT NO. 7017	
27. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) CAN - REGION - F SH - ROUT - SIGNATURE ON FILE MIGNED Date		28. NAME AND ADDRESS OF FACILITY WHERE SERVICES WERE RENDERED (If other than home or office) FAMILY EYE CARE CENTER PA 515 CASH ROAD CANDEN AR 71701	
29. PHYSICIAN'S, SUPPLIER'S BILLING NAME, ADDRESS, ZIP CODE & PHONE # FAMILY EYE CARE CENTER PA 515 CASH ROAD CANDEN AR 71701 870 836-2525 PRNU GRPY 710670979		30. TOTAL CHARGE 65 00 31. AMOUNT PAID 00 32. BALANCE DUE 65 00	

PLEASE PRINT OR TYPE

"C"

PGBA, LLC
TRICARE SOUTH REGION
P.O. BOX 7032
CAMDEN, SC 29020-7032

TRICARE EXPLANATION OF BENEFITS

This is a statement of the action taken on your TRICARE claim.
Keep this notice for your records.



www.humana-military.com

Date of Notice: August 10, 2005
Sponsor SSN: ***-**-5276
Sponsor Name: RAYFORD J WRIGHT
Beneficiary Name: RAPAELE WRIGHT

RAYFORD J WRIGHT
P O BOX 310
BEARDEN AR 71720-0310

Benefits were payable to:

THOMAS M DEDMAN OD
515 CASH ROAD
CAMDEN AR 71701

Claim Number: 5217X0HQC-00-00

Services Provided By/ Date of Services	Services Provided	Amount Billed	TRICARE Approved	See Remarks
THOMAS M DEDMAN OD 08/02/2005	001 Eye exam, new patient (92002)	65.00	64.53	1, 2, 3, 4
Totals:		65.00	64.53	

Claim Summary	Beneficiary Liability Summary	Benefit Period Summary
Amount Billed: 65.00 TRICARE Approved: 64.53 Non-covered: 0.47 Paid by Beneficiary: 0.00 Other Insurance: 0.00 Paid to Provider: 0.00 Paid to Beneficiary: 0.00 Check Number:	Deductible: 64.53 Copayment: 0.00 Cost Share: 0.00 Patient Responsibility: 64.53	Fiscal Year Beginning: October 01, 2004 Individual: 64.53 Family: 64.53 Catastrophic Cap: 102.87

Remarks:

- 1 - CHARGES ARE MORE THAN ALLOWABLE AMOUNT.
- 2 - HUMANA AND PGBA ARE MAKING TRICARE EASIER. FOR ONLINE CLAIM AND REFERRAL STATUS, ELIGIBILITY AND MUCH MORE, VISIT WWW.HUMANA-MILITARY.COM AND WWW.MYTRICARE.COM.
- 3 - \$102.87 HAS BEEN APPLIED TOWARD THE FISCAL YEAR CATASTROPHIC CAP OF \$3,000.00.
- 4 - TRICARE PRIME CAN SAVE YOU MONEY. LEARN HOW TO ENROLL BY CALLING 1-800-444-5445.

1-800-403-3950

THIS IS NOT A BILL

If you have questions regarding this notice, please call or write us at telephone number/address listed above.



CHAPTER 7
SECTION 6.1

OPHTHALMOLOGICAL SERVICES

ISSUE DATE: November 3, 1992

AUTHORITY: 32 CFR 199.4(c)(2)(xvi), (e)(6), (g)(46) and (g)(50)

I. CPT¹ PROCEDURE CODE RANGES

92002 - 92060, 92070 - 92335, 92390 - 92499

II. DESCRIPTION

Ophthalmological services may include an examination and other specialized services. The purpose of an examination is to diagnose or treat a medical condition of the eye, eyelid, lacrimal system, or orbit. A "routine eye examination" is an evaluation of the eyes, including but not limited to refractive services, that is not related to a medical or surgical condition or to the medical or surgical treatment of a covered illness or injury.

III. POLICY

A. For all beneficiaries, ophthalmological services (including refractive services) provided in connection with the medical or surgical treatment of a covered illness or injury are covered.

B. Section 632 of P.L. 98-525 signed into effect on October 19, 1994, authorizes payment under TRICARE for one routine eye examination per year per person for dependents of active duty members.

1. Routine eye examinations as defined in 32 CFR 199.2 includes coverage of those services rendered in order to determine the refractive state of the eyes. The CPT² procedure codes for payment of routine eye examinations are as follows:

92002 - EYE EXAM, NEW PATIENT
92004 - EYE EXAM, NEW PATIENT
92012 - EYE EXAM, ESTABLISHED PATIENT
92014 - EYE EXAM & TREATMENT
92015 - REFRACTION
99172 - OCULAR FUNCTION SCREEN
99173 - VISUAL ACUITY SCREEN

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TRICARE POLICY MANUAL 6010.54-M, AUGUST 1, 2002

CHAPTER 7, SECTION 6.1

OPHTHALMOLOGICAL SERVICES

2. TRICARE Prime active duty family members may receive an annual routine eye examination from any network provider without referral, authorization, or preauthorization from the Primary Care Manager (PCM), or any other authority; i.e., a Prime active duty family member will be allowed to set up his or her own appointment for a comprehensive eye examination with a network optometrist and/or ophthalmologist. Standard active duty family members may self-refer to an optometrist and/or ophthalmologist regardless of whether or not they are a network provider; i.e., a Standard active duty family member may set up his or her own appointment with either a network or non-network optometrist and/or ophthalmologist. (See Chapter 7, Sections 2.1 and 2.2.)

C. For Prime enrollees, see Chapter 7, Section 2.2 for additional information on eye examination.

IV. EXCLUSIONS

A. Coverage may not be extended for "routine eye examinations" provided to beneficiaries other than family members of active duty personnel.

B. Orthoptics, also known as vision training, vision therapy, eye exercises, eye therapy, is excluded by 32 CFR 199.4(g)(46) (CPT² procedure code 92065).

C. Heidelberg Retina Tomograph (HRT) is unproven.

- END -

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Attachment F



LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and NMI

COPY

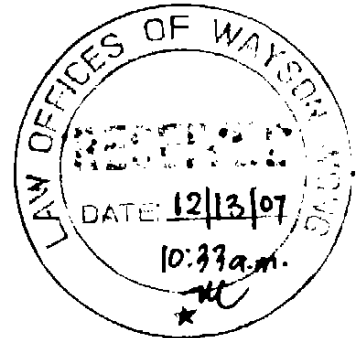
Sirena Plaza, Suite 500
108 Hernan Cortez Avenue
Hagatña, Guam 96910

(671) 472-7332
FAX: (671) 472-7215

December 11, 2007

Wayson W.S. Wong
142 Seaton Blvd., Suite 101
Hagatna, Guam 96910

RE: Lewis v. United States



Dear Wayson,

You have sent me a copy of a PDF draft settlement agreement that we had worked on after hours one night. Let me walk through a brief overview of our discussions and drafts as best I can.

Originally, I sent you the standard Department of Justice settlement agreement language. You wanted to alter the standard language so that the agreement would be kept secret. Your written changes were typed in for review. There are limitations that apply to the United States and so I changed language in the relevant paragraph such that I would agree to cooperate with your efforts to the extent I was allowed. We were trying to work out language that would satisfy both of us, to the greatest extent possible, as to the secrecy you requested.

That was the point where I sent a PDF copy to you (call this "DRAFT 2").

We then discussed your hope to have your client's medical insurance obligations relieved by the agreement. I noted then that you had also changed language in another section of the standard agreement in an attempt to exempt your client from her obligations to her insurance regarding her co-payment for private doctors she went to for treatment. I have made every effort to make clear to you that I have no influence with the amounts charged by private providers, nor do I have any ability to change the coverage she negotiated and paid for with her insurance company.

I then emailed and subsequently forwarded a hard copy that had both the language about cooperating with your request for secrecy and language to make it clear that I have no influence over your client's insurance or her private providers of medical care.

As I continue to offer,..... if you can show me particular bills you are concerned about, I would be happy to analyze whether the billing is coming from treatment at the U.S. Naval Hospital Guam or Tripler such that I could influence its billing. To date you have refused to show me anything. Instead, you want to engage in abstract discussions that you seem to hope will give you an argument that your client is somehow relieved of her duties to pay her insurance company for treatment that she got from

Attachment
F

Wayson Wong
December 11, 2007
Page 2

private providers.

Now it appears that you have taken the PDF draft copy from the evening when we were focused on the secrecy language, added your signature to the PDF, and state that you want to call it the "settlement agreement" in this case. Draft 2 is not the settlement agreement in this case. That is why the draft was in PDF form only.

At every stage in your arguments, I have made every effort to emphasize two points:

- 1). I can only cooperate with your efforts at secrecy to the extent it does not conflict with other requirements imposed on the United States to reveal such agreements; and
- 2). I have no influence over the amounts private providers charge to your client and can not give her an argument to not pay her co-payments and other obligations to her insurance company.

I am concerned that you would sign a PDF, non original, and in an attempt to get something that is not agreed to and is not possible.

My Best,

LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and NMI

BY: 

MIKEL W. SCHWAB
Assistant U.S. Attorney

Attachment G



COPY

U.S. Department of Justice

LEONARDO M. RAPADAS

United States Attorney
Districts of Guam and NMI

Sirena Plaza, Suite 500
108 Hernan Cortez Avenue
Hagatna, Guam 96910

(671) 472-7332
FAX: (671) 472-7215

December 5, 2007

Wayson W.S. Wong, Esq.
142 Seaton Blvd, Ste 101
Hagatna, Guam 96910

Re: Lewis v. United States

Dear Wayson,

Enclosed is the standard USDOJ form for settlement. A footnote is included to clarify that the co-payment obligations of your client to her insurance company for care received from private doctors are not affected by our settlement. The United States has agreed not to pursue the costs of her medical care by DOD doctors at the U.S. medical facilities where she received surgery and follow-up treatment.

I have also included language stating that we will cooperate in your efforts keep the settlement confidential, to the extent that we can.

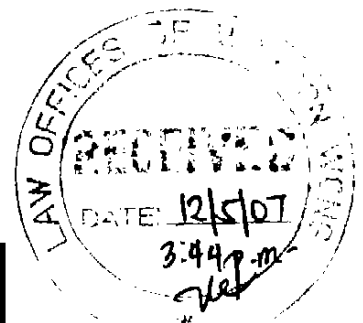
You may be subsequently asked to provide further information for the electronic transfer of funds. The prompt return of these documents will assure that the payment is provided quickly.

Thank you.

LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and NMI

BY: _____

MIKEL W. SCHWAB
Assistant U.S. Attorney



Attachment
G